

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Transmission Company of Illinois	:	
	:	Docket No. 15-0390
Petition for an Order Pursuant to	:	
Section 8-509 of the Public Utilities Act	:	
Authorizing Use of Eminent Domain Power.	:	

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

Kelly A. Turner
Marcy Sherrill
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
Email: kturner@icc.illinois.gov
msherrill@icc.illinois.gov

*Counsel for the Staff of the
Illinois Commerce Commission*

July 15, 2015

Table of Contents

I. Introduction	1
II. Statutory Authority and Standard of Review	3
A. Contact with Landowners	5
B. Explanation of Compensation Offer	6
C. Reasonableness of Compensation Offers	6
D. Responsiveness to Landowner Concerns	6
E. Properties with Non-monetary Concerns	7
III. Conclusion	8

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Transmission Company of Illinois	:	
	:	Docket No. 15-0390
Petition for an Order Pursuant to	:	
Section 8-509 of the Public Utilities Act	:	
Authorizing Use of Eminent Domain Power.	:	

INITIAL BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”) (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the instant proceeding.

I. Introduction

This matter comes before the Commission on the Ameren Transmission Company of Illinois’ (“ATXI’s”) Verified Petition (“Petition”) for an order authorizing the use of eminent domain pursuant to Section 8-509 of the Illinois Public Utilities Act, 220 ILCS 5/8-509. (See generally, Petition.) With its Orders in ICC Docket No. 12-0598, the Commission granted ATXI a Certificate of Public Convenience and Necessity pursuant to Section 8-406.1 of the Act and, pursuant to Section 8-503 of the Act, authorized ATXI to construct a 345 kV transmission line in, among other places, Morgan, Scott and Sangamon Counties, in Illinois. (Staff Ex. 1.0, 2.)

On June 15, 2015, Ameren Transmission Company of Illinois (“ATXI” or “Company”) filed a Petition requesting that the Commission authorize use of eminent

domain to enable it to acquire necessary land rights for a 150-foot easement across various properties. These easements are necessary so that ATXI can construct the planned 345 kV overhead transmission line approved in Docket No. 12-0598. ATXI's Petition requests eminent domain authority to obtain the necessary land rights from 22 primary land owners, who collectively own 40 separate parcels identified by 65 separate tax identification numbers ("Unsigned Properties"). (Petition, 14.) Concurrent with its Petition, ATXI filed testimony in support of its request.

This eminent domain proceeding does not include all of the properties across which ATXI will seek eminent domain authority in conjunction with Docket 12-0598; rather, it includes only certain properties across which ATXI requires land rights for the Meredosia and Pawnee segment of the project. These properties are identified by tax identification numbers and shown on a map in Exhibit A to ATXI's Petition. ATXI's 345 kV transmission line will ultimately extend from the Mississippi River to Indiana and this is ATXI's eighth petition seeking eminent domain authority for various segments of the transmission line. (Staff Ex. 1.0, 2.)

The following parties intervened in the docket: Joseph and Barbara Bergschneider; Paula D. Harms and Eric Van Gundy. ATXI subsequently withdrew its request with respect to the Bergschneiders and Ms. Harms withdrew her intervention.

ATXI filed its direct testimony on June 15, 2015. On July 7, 2015 Staff and Intervenor Joseph and Barbara Bergschneider, Paula D. Harms and Eric Van Gundy filed direct testimony. ATXI submitted rebuttal testimony on July 9, 2015. An evidentiary hearing was held on July 13, 2015. Pre-filed evidence was admitted into the record,

witnesses were made available for cross examination, and the record was held open generally. (Tr. (July 13, 2015).)

II. Statutory Authority and Standard of Review

Section 8-509 of the Act provides in relevant part as follows:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain. If a public utility seeks relief under this Section in the same proceeding in which it seeks a certificate of public convenience and necessity under Section 8-406.1 of this Act, the Commission shall enter its order under this Section either as part of the Section 8-406.1 order or at the same time it enters the Section 8-406.1 order. If a public utility seeks relief under this Section after the Commission enters its order in the Section 8-406.1 proceeding, the Commission shall issue its order under this Section within 45 days after the utility files its petition under this Section.

220 ILCS 5/8-509.

The Commission has found that a request under Section 8-509 is not a mere formality; rather, a showing must also be made that the utility made a reasonable attempt to acquire the property before it will be allowed to exercise eminent domain authority in circuit court. As the Commission noted in its Order in *Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company, Petition for a Certificate of Public Convenience and Necessity, pursuant to the similar Section 8-406 of the Illinois Public Utilities Act, to construct, operate and maintain new 138,000 volt electric lines in LaSalle County, Illinois*, Docket No. 06-0706 (March 11, 2009) (“Illinois Power Order”):

[G]ranting relief under Sections 8-406 and 8-503 does not render a later request under Section 8-509 a mere formality. While it is true that authority under Section 8-503 is specifically required before eminent domain authority can be granted under Section 8-509, a showing must also be made that the utility made a reasonable attempt to acquire the property before it will be allowed to exercise eminent domain authority in circuit court. The Commission is not prepared to say that even after a utility makes a reasonable attempt to acquire the property that it would automatically receive eminent domain authority under Section 8-509. Nor will the

Commission assume that a circuit court would permit the exercise of eminent domain by a utility that has received authority under Section 8-509 from the Commission.

Illinois Power Order at 88-89 (emphasis added).

In other words, in the Commission's view, grant of authority under Sections 8-406 (and, by extension, Section 8-406.1) and 8-503 is necessary, but alone is not sufficient justification for an award of eminent domain authority under Section 8-509. A utility must also demonstrate that it has negotiated in good faith with landowners and has nonetheless failed to obtain all of the necessary parcels. *Id.* The Commission has reiterated its determination that utilities should negotiate prior to receiving eminent domain authority in several subsequent proceedings. *See, e.g., Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company: Petition for an Order pursuant to Section 8-509 of the Public Utilities Act Approving Petitioners' use of Eminent Domain Power*, Final Order ICC Docket No. 10-0173, 14 (November 23, 2010); *Central Illinois Public Service Company d/b/a AmerenCIPS: Petition for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406 of the Illinois Public Utilities Act, to construct, operate and maintain new 138,000 volt electric lines in Madison County, Illinois*, Final Order ICC Docket No. 07-0532, 13-14 (May 6, 2009). In keeping with prior Commission Orders, ATXI should be required to demonstrate it has negotiated in good faith with adjacent landowners before eminent domain under Section 8-509 is granted in any future proceedings.

In its Final Order in Docket No. 13-0456, the Commission provided guidance for evaluating whether a company has made a reasonable effort to negotiate for the easements it needs to construct an authorized transmission line. *Ameren Illinois*

Company, d/b/a Ameren Illinois, Final Order ICC Docket No. 13-0456, 3 (September 10, 2013) (“AIC Order”). Specifically, the Commission stated that prior to the Commission authorizing a utility to request eminent domain authority in circuit court under Section 8-509, the utility must show that it made a reasonable attempt to acquire the property at issue through negotiation. (*Id.*, citing March 11, 2009 Order in Docket No. 06-0706 at 88.) In that case, the Commission evaluated whether the company made reasonable efforts to negotiate for the easements it needed to construct the authorized transmission line. In making its determination, the Commission relied upon five factors: (1) the number and extent of contacts with the landowners, (2) whether the utility has explained its offer of compensation, (3) whether the offers of compensation are comparable to offers made to similarly situated landowners, (4) whether the utility has made an effort to address landowner concerns, and (5) whether further negotiations will likely prove fruitful. (AIC Order, 4.)

A. Contact with Landowners

ATXI representatives or representatives of ATXI’s contract land agent, Contract Land Staff (“CLS”), have contacted the owners of each Unsigned Property no less than 32 times. Some of the owners of the Unsigned Properties have been contacted in excess of ninety times. (ATXI Ex. 1.0, 7.) ATXI includes a summary of its contacts with the landowners of each property. The number of contacts made with each owner of an Unsigned Property is detailed on ATXI Exhibit 2.1 and further described in ATXI Exhibit 2.3. In addition, ATXI submitted confidential workpapers contemporaneously with its filing for each Unsigned Property that include the date and time of each successful and unsuccessful attempt to contact the landowners or their representative. (Staff Ex. 1.0, 5-

6.)

B. Explanation of Compensation Offer

ATXI's property evaluations and financial offers to landowners are based upon a third-party independent appraiser's determination of the market value of each property. (Staff Ex. 1.0, 6.) It appears from the evidence that ATXI's initial offers are approximately 90% of the fee value of property subject to the easement, and include diminution of value for the remaining property due to the presence of the easement, as well as payment for crop damage resulting from the transmission line installation, if applicable. (Staff Ex. 1.0, 6.) ATXI encouraged landowners to provide their own appraisal to ATXI for consideration during negotiations. (ATXI 1.0, 12.) Additionally, CLS agents provided each landowner with a calculation sheet stating the market price per acre; the acreage of the easement area; the percentage of market value at which ATXI believed the easement should be valued (as determined by ATXI's independent appraiser); prepaid crop damages (for agricultural property); prepaid general property damages for compaction, deep ripping and restoration (such as fertilizer, rutting and reseeding) and the compensation offer itself. (ATXI Ex. 2.0, 6.)

C. Reasonableness of Compensation Offers

Staff witness Greg Rockrohr, an electrical engineer, offers no opinion regarding the adequacy of ATXI's monetary offers. (Staff Ex. 1.0, 7.)

D. Responsiveness to Landowner Concerns

ATXI has demonstrated that it made reasonable efforts to obtain the property rights it seeks through use of logically and consistently-derived initial compensation offers, followed by discussions and negotiations with individual landowners. (Staff Ex. 1.0, 5, 7.)

There are properties included within ATXI's request for which ATXI's inability to acquire a voluntary easement may be due to reasons other than the amount of compensation offered.

(1) ATXI indicates that owners of certain parcels do not want the transmission line on their properties at all, and have provided no counteroffer or easement language revisions. (ATXI Ex. 2.3 Part B, 1-5.) The ATXI Identifiers for these parcels are:

A_ILRP_MP_MO_216
 A_ILRP_MP_MO_245
 A_ILRP_MP_MO_327
 A_ILRP_MP_MO_333
 A_ILRP_MP_SA_001
 A_ILRP_MP_SA_013.
 A_ILRP_MP_SA_016
 A_ILRP_MP_SA_017
 A_ILRP_MP_SA_018
 A_ILRP_MP_SA_019
 A_ILRP_MP_SA_044
 A_ILRP_MP_SA_097
 A_ILRP_MP_SA_134
 A_ILRP_MP_SA_013

(2) The owner of the property with ATXI Identifier A_ILRP_MP_MO_195 apparently has no remaining issues with the easement but will not sign unless her neighbor also signs. (ATXI Ex. 2.3, Part G, 1-2.)

(3) The owners of some parcels have declined to indicate why they are not granting ATXI an easement. (ATXI Ex. 2.3, Parts H and I.) These include properties with ATXI Identifiers:

A_ILRP_MP_MO_198
 A_ILRP_MP_MO_212
 A_ILRP_MP_MO_217

E. Usefulness of Further Negotiations

During the pendency of this case, ATXI reached settlement with one property

owner, Circle C Partners, and withdrew its request for eminent domain authority for easements across parcels with ATXI Identifiers A_ILRP_MP_MO_231 and A_ILRP_MP_MO_234. Additionally, ATXI no longer requests Eminent Domain authority with respect to parcel A_ILRP_MP_MO_198_ROW, owned by interveners Joseph and Barbara Bergschneider. (ATXI Ex. 4.0, 9.) Staff does not object to ATXI's request for eminent domain authority with respect to the other parcels, not identified above, included in its petition. Staff does not take a position on the usefulness of further negotiations.

III. Conclusion

For the reasons set forth above, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Initial Brief.

Respectfully submitted,

Kelly Armstrong Turner
Marcy Sherrill
Illinois Commerce Commission
Office of General Counsel
160 North LaSalle Street, C-800
Chicago, IL 60601
(312) 793-2877
kturner@icc.illinois.gov
msherrill@icc.illinois.gov

July 15, 2015

*Counsel for Staff of the Illinois
Commerce Commission*